

EASTERN DIVISION

1

firm Kaye Scholer LLP. Throughout those negotiations, our communications were primarily with John Rosenthal and Steve Spears, counsel for Monsanto.

3. Although the parties discussed specific issues related to the ESI Stipulation during a number of meet and confer telephone conferences and one in-person meeting, the parties' positions were primarily presented in the form of redline edits to the draft ESI Stipulation which were exchanged by e-mail. Monsanto and Defendants each prepared more than one such redline of the draft.

4. With regard to Paragraph 7, while the parties agreed that the process would be based on an agreed set of "custodians," the drafts exchanged by the parties reflected our different views on the scope of collection and, thus, of production. Monsanto's drafts generally sought to limit the process to documents and ESI of the identified custodians. Defendants' drafts sought to assure that the process would include documents and ESI in shared and centralized locations.

5. During the meeting of the parties on December 17, 2009, there was discussion of an approach to bridge the divide between Monsanto's exclusion of all central files and shared spaces from the production obligations in the ESI Stipulation and Defendants' proposal to identify all such spaces or files containing potentially-responsive documents and ESI. Defendants' understanding of the principles agreed upon during that meeting was reflected in the redline draft of the ESI Stipulation provided to Monsanto's counsel in January 2010. In particular, the parties had agreed to use the interviews of agreed custodians as the basis for identifying central files, archives and shared servers that may contain potentially-relevant documents and ESI. I do not recall any time during that meeting or in any communication

between the parties relating to the ESI Stipulation in which Monsanto's counsel referred to a limitation to documents and ESI stored or saved by named custodians.

6. When the parties were preparing the Joint Submission that was filed with the Court on February 19, 2010, Monsanto proposed to describe the production obligations agreed to under the ESI Stipulation as follows: "each party shall be required to collect and produce documents and ESI only from a specific number of identified custodians." Because this language did not comport with Defendants' understanding of the status of the ESI Stipulation negotiations, Defendants proposed instead that the Joint Stipulation state: "each party shall be required to collect and produce documents and ESI only from materials relevant to the claims or defenses in this case that are maintained, used, or identified by an agreed group of custodians." Monsanto did not propose to change this language in the final version of the Joint Submission that was filed with the Court.

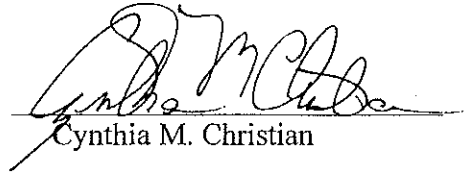
7. Thereafter, in March 2010, Defendants provided a redline draft of the ESI Stipulation to Monsanto which included edits to Paragraph 7. These edits were not solely typographical or grammatical corrections. They reflected Defendants' expectation that the parties' interviews with their custodians would not be limited to the documents for which the custodian was personally responsible but also would identify locations in central files and shared electronic spaces where custodians could access and obtain documents and information referenced, relied on, or otherwise related to the ordinary course of their work. Monsanto did not

question or propose any alterations to those edits. The parties' ultimate agreement on how the custodial protocol would be implemented in this case was memorialized in that final version of Paragraph 7.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 9, 2009

Orlando, Florida



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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing under seal and also sent the foregoing document via email to the following ECF registrants:

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